



**Empire State
Development**

NY Television Writers and Directors Disparity Study

Issued: November 12, 2021

Submission Deadline: December 7, 2021 by 2:00 PM ET

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below.

Designated Contacts for this Procurement:

Primary Contact: John F. Discolo
Secondary Contact: Ralph Volcy

All contacts/inquiries shall be made by email to the following address:

TVFilmDisparityStudyRFP2021@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

SECTION I – PURPOSE, BACKGROUND & SCOPE OF SERVICES

1.0 PURPOSE

New York State Urban Development Corporation, D/B/A Empire State Development (“ESD”), on behalf of the State of New York (“NYS” or “State”), is authorized and required by statute, to seek the services of a qualified vendor (“hereinafter Respondent”) to design and conduct a complete, comprehensive and legally supportable statewide disparity study (“[YEAR] Disparity Study” or “Study”) regarding the State’s use of tax credits to encourage employment, usage and/or retention of minorities and women as writers and directors in the NYS television industry.

Disparity Studies are the primary means by which states and large municipalities determine whether there is legal justification for the establishment, continuation or modification of race and gender based programs designed to remedy identified disparities in a given industry. The Study must provide the basis for determining whether a remedial program of awarding a State tax credit on the basis of race/gender is supported by law, and the extent to which it may be implemented as a remedial measure meant to reduce disparities in the participation by minorities and women as writers and directors in the television industry in NYS. The study must also establish the basis by which to evaluate the impact of the use of tax credits to lower the costs to relevant television production companies in hiring more minorities and women as writers and directors as defined under the statute and alleviate identified disparities.

For the purpose of these objectives, the selected Respondent shall be guided in its work by the parameters set forth by the United States Supreme Court in the cases of City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (Croson), and Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995) (Adarand) and their progeny as well as any other applicable law that bear on the rights and abilities of state governments to implement race and gender conscious preference programs. The Disparity Study is expected to investigate and where applicable, identify discrimination in the relevant industry, in order to support a race and gender conscious program to ameliorate such discrimination. Such findings, which should be robust and defensible and may include both statistical and anecdotal data, provide the State a “compelling interest” in offering tax credits in the NYS television industry for the utilization of minority and women writers and directors. Importantly, the continuing success of the State’s remedial programs requires that they not only be carefully justified, but also meticulously applied such that preferential treatment based on race and gender is determinative in only those very narrow circumstances in which it is truly relevant. To that end, the Respondent should reference and be conversant with all relevant NYS and federal laws relating to industry participation on the basis of race and gender.

1.1 BACKGROUND

In 2019 the television writers' and directors' fees and salaries credit legislation was passed by the Legislature and signed by the Governor on the condition that, in order to meet constitutional muster, there would be a chapter amendment to the bill requiring a disparity study to first be conducted to demonstrate any potential underutilization of minority and women directors and screenwriters in the television industry who would benefit from this legislation. As set forth in Part XX, Subpart X of Chapter 55 of the Laws of 2020, implementation of this credit is conditioned on a finding of such underutilization.

1.2 DEFINITIONS

The following are definitions related to this RFP.

Minority group member shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- Black persons having origins in any of the Black African racial groups;
- Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- Native American or Alaskan native persons having origins in any of the original peoples of North America.
- Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

Writer means a person who is engaged by a qualified film production company or a qualified independent film production company to write television scripts, outlines, rewrites, stories, or teleplays for television series and who reports to work regularly in a writers room located in the State. For the purposes of this definition, "writer" shall not include showrunners or executive producers.

Writers room means a room or physical location in the state where writers employed by a qualified film production company or qualified independent film production company write television scripts, outlines, rewrites, stories, or teleplays for television series utilized in a qualified film. A writers room is located in the state only if it is in use in the state at least eighty percent of the time it is in existence.

Director means an individual employed or retained to direct the production, as the word "direct" is commonly used in the motion picture industry, who would be classified as a director under the basic agreement in place between the Association of Motion Picture and Television Producers and the Director's Guild of America and who must meet the minimum criteria for work on qualified productions in New York state as established by the commissioner of economic development by regulation.

Qualified film production company shall mean a corporation, partnership, limited partnership, or other entity or individual whose project is conditionally eligible to receive a tax credit under section twenty-four of New York State Tax Law which or who is principally engaged in the production of a qualified film and controls the qualified film during production

Qualified film means a television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed.

1.3 SCOPE OF SERVICES

The State is seeking a qualified Respondent to design and conduct a statewide disparity study and policy review, and if supported by the Respondent's results, would provide the basis for the use of tax credits on fees or salaries as a remedial measure to alleviate any such identified disparities:

1. Workforce Study

For the Workforce Study, the Respondent shall design and conduct a study to assess the level of employment of qualified minorities and women as directors and writers on NYS television productions, and specifically on productions participating in the NYS Film Tax Incentive Program. In so doing the Respondent shall assess level of disparity of women and minority writers and directors based on their availability and employment within New York State's television industry, and where appropriate as defined by law.

2. Policy Review

The Respondent will conduct a review of best practices, along race and gender conscious remedial programmatic tools in other states and large municipalities that may be relevant to the NYS context. Respondent must also provide a literature review of the impact of the use of financial incentives (such as tax credits by states and large municipalities) to lower the hiring costs to relevant television production companies in hiring more minorities and women as writers and directors as defined under the statute. The Respondent shall also provide an analytical methodology with data and recommendations to assist ESD in determining on an annual basis the impact of the Writer and Director Diversity Credit on the hiring of minorities and women to these targeted positions.

A. Data Collection

The Respondent shall be solely responsible for defining, researching, compiling, and analyzing all data required to provide the services described in this RFP. The State will, to the extent possible, make records available to the Respondent and cooperate with the Respondent in the retrieval of the records from third parties to the extent reasonable and practicable. The records may be available in various formats including the Internet, computer databases, spreadsheets, and physical copies. Where ESD does not provide the Respondent with data, the Respondent must research and gather such data, and must set forth the methods and sources by and from which the data was collected and the steps taken to ensure data integrity. The Respondent may use statistically valid sampling and estimating methods, as appropriate, where actual procurement data and records are incomplete. However, the Respondent is responsible for the legal sufficiency of any such method used.

1. NYS Television Data from NYS

At its discretion and as available ESD will provide the Respondent with relevant data in its review and approval any request for available and releasable state or other relevant governmental data.

2. Availability Industry Data

The Respondent shall research the existence of women and minority directors and writers within the State's relevant television production market area as a whole and, as appropriate and agreed by ESD, within the various regions of the State. In addition the Respondent shall research, review, and include, as appropriate, information from public and private registries of directors, business or industry groups, listings of nationally and locally recognized industry organizations, and as appropriate the New York

Department of State database of active television production related companies, etc. Furthermore, the Respondent shall also obtain and analyze relevant data sources, such as U.S. census data, and shall demonstrate that it has employed valid statistical sampling in order to accurately ascertain the number of women and minorities in the State's relevant market area.

3. Workforce Availability Data

The Respondent shall research the existence of qualified minorities and women within the State's relevant market area as a whole, and as appropriate, within the various regions of the State. The Respondent shall research, review, and include as appropriate information from sources including, but not limited to the New York State Department of Labor, workforce or industry groups, federal and local workforce data, etc. Furthermore, the Respondent shall obtain and analyze relevant data sources, such as U.S. Census data, and shall demonstrate that it has employed valid statistical sampling to accurately ascertain the number of minorities and women in the State's relevant television market area.

B. Disparity Analysis

In determining whether any disparity exists for the Study, Respondent shall (i) define and calculate availability of minority and women writers and directors in NYS; (ii) calculate the make-up of women and minorities on tax credit eligible television productions within NYS; And; (iii) conduct appropriate statistical or econometric analysis of employment utilization data to determine the extent, if any, there are disparities in workforce utilization.

1. Availability

a. Workforce Study

The Respondent shall define, quantify and explain the availability of qualified minority group members and women in the relevant television industry market sectors, subsectors (by NAICS codes and other relevant indices) and if and as appropriate, regions of the State for writers and directors. The analysis of minorities and women in the television industry should include breakdowns by race and gender. In analyzing availability, the Respondent shall:

- i. Determine and report on the criteria used to define qualified and available minority group members and women as writers and directors within the television industry and by regions of the State;
- ii. Collect and provide data on minority group members and women, if and as appropriate by region and market sector that includes an assessment of information pertaining to business and professional capacity to perform on television industry production contracts as directors and writers, broken down by gender and minority group member status on such television industry productions and contracts. Workforce data shall include information impacting workers' ability to perform on

television industry contracts and productions including, where appropriate, skill and training levels, experience, education and union and industry affiliations, and mentorships; and

- iii. Collect any other relevant data, based on Respondent's design of the study

2. Utilization of Minorities and Women as Writers and Directors

a. Workforce Study

The Respondent shall analyze the Workforce Utilization. Relative to television industry productions, the utilization analysis must describe the percentages of

- i. The available number of women and minority writers and directors; and
- ii. Women and minorities (as writers or directors) that were actually utilized on NYS television productions and specifically those participating in the NYS Film and TV Tax Incentive Program;
- iii. Total director and writer jobs awarded to women and minorities within the NYS television industry broken down by subcategories within the NAICS code or other relevant television industry classification for such writers and directors.

3. Disparity

a. Workforce Study

In determining whether any disparity exists between the number of qualified minorities and women that are ready, willing and able (i.e. available) to perform on state tax credit subsidized NYS television industry productions, and the number of such minorities and women actually engaged to perform such contracts and productions— and to the extent possible, subcontracts – the Respondent shall (a) define and calculate the availability of minorities and women writers and directors; (b) where appropriate segment the utilization analysis by region and by dollar amount of television industry contract, production staffing size or other appropriate metrics; and (c) conduct appropriate statistical or econometric analysis of the availability and utilization data to determine the extent, if any, of the disparity.

The Respondent shall also provide relevant anecdotal data and information that accurately sets out the scope and impact of any relevant disparity identified by the study conducted hereunder.

Respondent shall fully define “statistically significant disparity” for the purposes of its analysis, and explain the rationale underlying its definition. In assessing any statistical disparity in utilization rates, the Respondent shall employ appropriate statistical methodologies to control for any relevant non-gender and minority-related characteristics or criteria that might affect the disparity analysis, explain any such criteria it considers, and describe the statistical analysis it utilizes..

Policy Study Components

1. Policy Review

To the extent applicable based on the results of the disparity study, ESD also seeks an analytical methodology with related data and recommendations to assist in determining on an annual basis the impact of the television writers' and directors' fees and salaries tax credit on employment and the economy of the State, including with respect to whether the maximum aggregate amount of the credit should be modified or reduced in order to remain appropriately tailored to any identified disparities in the utilization of minority and women screenwriters and directors in NYS television industry contracts and productions.

ESD further seeks information outlining the use and efficacy of race and gender conscious remedial programmatic tools in other states and large municipalities which might be instructive to NY State practitioners and policymakers as they craft policies, programs and procedures designed to remedy utilization disparities in State contracting. *Croson* and similar controlling statutes and their progeny should guide Respondent's assessment of such programs.

In addition, in the event the study or report produced under this agreement becomes the subject of litigation or other adversarial legal proceedings, Respondent agrees to provide consulting services on such proceedings pursuant to mutually agreed upon terms.

1.4 **DELIVERABLES**

A. General Requirements

All deliverables shall be subject to the following requirements:

1. The Respondent will be required to prepare and submit the documents, identified below, to ESD as both a physical copy and in an encrypted electronic format compatible with Microsoft software with complete tabular findings. ESD shall have access upon request to all data, information, and analyses generated during the course of the Study. At the conclusion of the study and delivery of the final report, the Respondent shall also produce in electronic format a copy of all of the data and documents that were considered during the disparity study and in the preparation and completion of the final report.
2. All reports shall be: (a) written in clear and concise language using consistent terms; (b) organized in a logical manner; (c) fully illustrated with relevant examples; and (d) consistent with widely accepted and legally defensible methodology. The Respondent shall provide to ESD all notes, work papers, records and documentation that detail, chronicle, and support its methods, analysis and conclusions for each of the elements in the work. Should the Respondent develop a computerized database in the course of the work, the Respondent shall provide the database to ESD. Programs and data entry materials developed in connection with the Study must be compatible with Microsoft compatible software. The final version of any deliverable must address any deficiencies or concerns raised by ESD regarding the draft deliverable.

B. Monthly Progress Reports

ESD requires monthly progress reports that describe tasks undertaken and the portion of each task that has been completed to date, as well as the tasks scheduled to be undertaken in the following month. These reports should also identify any problems encountered that might impact the work schedule or the successful completion of tasks, and the steps taken by the Respondent to resolve those problems. Any revisions to the work plan must be included in these monthly progress reports.

C. Disparity Study Report

1. Workforce Study Component

- a. Workforce Component of the Disparity Study Report shall address each of the requirements of Section 1.3 above. This shall include:
 - i. Data Collection
 - ii. Availability Study
 - iii. Utilization Analysis
 - iv. Statistical Disparity
- b. Respondent shall provide data on the number of qualified minority group members and women that are ready, willing and able (i.e. available) to provide labor as writers and directors on NY State tax credit subsidized television contracts and productions, and the number of such minority group members and women actually engaged to perform on such contracts and productions, and to the extent possible, subcontracts. The data shall, where appropriate, also include dollar value paid for writing and directing on each contract or productions type during the Study period along with the size of the production based on budget and region of the State. The data must be organized by industry using NAICS codes, SOC (Standard Occupational Classification), established television industry labor classification identifiers and other relevant factors, such as education level, experience, region of the State, etc. that will enable the State to ascertain the degree to which a disparity exists between those minorities and women within the relevant marketplace that are ready, willing and able to perform work on State tax credit subsidized television productions as compared with those minorities and women that are actually providing labor on such contracts and productions.

D. Policy Findings

1. Policy Analysis

The policy review shall also provide information concerning policy recommendations based on Respondent's understanding of effective tools designed to remediate disparities in minorities and women participation as directors and writers on NY State television industry contracts and productions. This assessment should include recommended best practices information around legality of policies, such as project goals, set-asides, mentor-protégé programs, and salary ranges.

2. Recommendations to assess impact

To the extent applicable based on the results of the disparity study, ESD also seeks an analytical methodology with related data and recommendations to assist in determining on an annual basis the impact of the television writers' and directors' fees and salaries tax credit on employment and the economy of the State, including with respect to whether the maximum aggregate amount of the credit should be modified or reduced in order to remain appropriately tailored to any identified disparities in the utilization of minority and women screenwriters and directors in NYS television industry contracts and productions.

E. Schedule of Deliverables

<u>Deliverable Name</u>	<u>Date Due</u>
Draft Disparity Study Report	No later than July 1, 2022
Final Disparity Study Report	No later than August 19, 2022
Draft Policy Analysis	No later than July 1, 2022
Final Policy Analysis	No later than August 19, 2022

1.5 MINIMUM QUALIFICATION REQUIREMENTS

Responses to this RFP must include information about Respondent's current capabilities, past experiences working with other states and large municipalities and how those experiences may inform or impact work with New York State as it relates to operating models and leading practices.

- A. Prior to the proposal due date for this RFP, the Respondent must have been in business for a minimum of five (5) years, performing relevant quantitative analyses, such as those described in Section 1.3 (Scope of Services) of this RFP.
- B. The Respondent must provide the names and addresses of at least three (3) business references.
- C. Prospective Respondents must possess adequate financial resources and organizational capacity to perform the services described in this RFP in an efficient and effective manner, with financial resources to pay expenses in advance of receipt of payment from ESD. ESD prefers a letter from a Certified Public Accountant (CPA) indicating that the Respondent has sufficient working capital, positive net worth, and has or can obtain a line of credit. ESD will also accept a letter from a party other than a CPA (such as an attorney, bank officer, corporate attorney, parent holding company) familiar with and attesting to the financial condition of the Respondent.
- D. The Respondent must adopt strict privacy protections to adequately protect the confidentiality of all data. All data transmissions must be encrypted. Throughout the course of this project, the Respondent may have access to confidential company information. The Respondent selected for this project must agree to protect confidential information and to sign non-disclosure agreements prepared by ESD. All information provided to, collected or otherwise obtained by the Respondent, the Respondent's staff and all subcontractors is proprietary and may not be disclosed in perpetuity, to any party other than ESD itself without ESD's express written approval.
- E. This section (1.5) of the RFP is not intended to itemize all requirements for an award of this project.

SECTION II - ADMINISTRATIVE INFORMATION

2.0 INQUIRIES

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the (Schedule of Dates) to TVFilmDisparityStudyRFP2021@esd.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

2.1 DESIGNATED CONTACTS

For the purpose of the Procurement Lobbying requirements of this RFP, ESD's designated contacts are listed on the front covering page.

2.2 SCHEDULE OF PERTINENT DATES

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	November 12, 2021
Deadline for Receipt of Questions	November 23, 2021
Deadline for ESD to Respond to Questions	November 30, 2021
Submission of Proposals	December 7, 2021 by 2:00 PM ET
Oral Presentations/Interviews	By appointment at the discretion of ESD
Award of Contract	To Be Determined
Start of Contract	To Be Determined

Interviews/oral presentations by finalist Respondents may be held at the discretion of ESD.

Please note, the Corporation reserves the right to change any of the dates stated in this RFP.

2.3 SUBMISSION OF PROPOSALS

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

i. Technical Proposal

The purpose of the Technical Proposal is to provide firms with an opportunity to demonstrate their qualifications, competencies, and capacity to undertake the engagement described herein. Below is a listing of the technical information to be provided by the Respondent. The Technical Proposal should contain sufficient information to assure ESD of its completeness.

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be in the following order as set forth below:

- A. Table of Contents
- B. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Plan and Approach
- E. Firm References
- F. Estimated Cost
- G. Diversity Practices

A. Table of Contents

B. Firm Experience and Qualifications

In this section of the Technical Proposal, Respondents should demonstrate relevant experience by providing the following:

1. A summary of the Respondent's technical expertise that describes the unique capabilities of the Respondent. This narrative should highlight the Respondent's ability to provide successful prior experience conducting disparity analyses, or analogous studies and include a description of the direct prior experience of your firm with New York State and/or other comparable governmental entities relating to disparity and policy analysis.
2. Respondents should detail at least three similar engagements comparable to those services detailed in Section 2.3, but no more than five. Please indicate, for each engagement completed:
 - Name of client organization
 - Type of client (e.g. government entity (local, State, Federal), private company etc.)
 - Project description and services provided
 - Project duration including start/end dates
 - Number of Respondent staff (FTEs) involved in the engagement
 - Any other information regarding the project that would assist ESD in determining the success experienced by the client. This may include previous disparity studies. If you wish to include previous studies as examples of your experience, please include a link to the study and not a hard copy in your proposal.

C. Staff Experience and Qualifications

In this section of the Technical Proposal, Respondents should demonstrate that the staff proposed have the knowledge and ability to perform the services described in the RFP and provide the following:

1. A project management and staffing plan that describes the unique capabilities of the individuals assigned. Include a narrative description of the specific function/role that each staff member would perform and their specific qualifications for their proposed role in this engagement. Lead staff should be identified.

Respondents should submit resumes for all members of the proposed team, including any subcontract personnel who may work on the engagement.

2. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.
3. Respondents should submit staff references' contact information for at least three (3) references from recent engagements, preferably with governmental entities, who can comment on the experience of the lead staff proposed for this engagement. Names, titles, addresses and telephone numbers of organizations and individuals who may be contacted for reference must be included.

ESD may seek information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Respondent to the client during the engagement.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD is not responsible for the lack of responsiveness of the references listed by Respondents, and ESD is not required to alert Respondents of a reference's unresponsiveness during the proposal evaluation period. Inability to contact a reference will not be looked upon favorably.

The State reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the State deems to be the most effective and efficient manner.

D. Project Plan and Approach

Proposals must include a work plan detailing the proposed research designs, indicating the techniques and methodologies planned to meet the objectives of the Study, as well as tasks, activities, data-gathering, analyses, milestones, and other information describing how the Respondent will complete and meet the goals of the Project. A Respondent must demonstrate clear understanding of the research question, the relevant data, and the analysis required for the Study. Where appropriate, a Respondent shall describe the effect of relevant court decisions on the proposed Study design, methodology and data analysis within the work plan. In addition, the work plan must identify any assumptions, hypotheses to be tested, anecdotal evidence, qualitative or quantitative data, procedures, and models that will be gathered and analyzed to test any such assumptions or hypotheses.

If sampling is proposed, discuss how this approach will ensure that the study is reliable and disparity data sufficient to be customized (or customizable) to individual TV industry contracting activity (e.g., to provide ESD with goal setting tools relevant to the industry). A successful Respondent shall conduct the Study and meet the prescribed deliverables in accordance with the work plan included in its proposal.

Responsive proposals will discuss the Respondent's proposed methodology for gathering the required data and how it would ensure the statistical significance of the analysis for the purposes described in Section 1. The Respondent must research and gather such data necessary to complete

the analysis, and must set forth the methods and sources by and from which the data is to be collected (including, but not limited to, relevant industry and governmental organizations), and must describe the means by which data integrity will be established. The work plan should also discuss any significant hurdles or challenges that Respondents anticipate will impede the success of the project. For each challenge identified, Respondents should discuss how they would mitigate those risks.

Respondents must also identify any expected variances between the requirements set forth in the RFP and Respondents' plans to complete the Study. The work plan should also include a timeline for the task to be completed in order to ensure the Schedule of Deliverables is met.

A Respondent must identify the resources it plans to utilize to complete the Study, including subcontractors, external data, software packages, and other anticipated resources. The work plan must describe how Respondents will employ subcontracts (especially MWBEs, and women and minority group members) performing the work necessary to complete the Project. The Respondent is expected to utilize MWBEs for contractual opportunities generated in connection with the scope of work to achieve an overall MWBE Participation Goals related to the total value of ESD's funding.

E. Firm References

The Respondent is asked to supply ESD with the names and contact information for two individuals (one primary and one alternate contact person) that ESD may contact as a reference for each engagement described above.

ESD may seek information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Respondent to the client during the engagement.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD is not responsible for the lack of responsiveness of the references listed by Respondents, and the State is not required to alert Respondents of a reference's unresponsiveness during the proposal evaluation period. Inability to contact a reference will not be looked upon favorably.

ESD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the State deems to be the most effective and efficient manner.

F. Cost Proposal

All Respondents must complete and submit with their proposal the budget which appears in this RFP as **Appendix A**. Respondents may not substitute their own budget in place of Appendix A. Proposals received that do not include a budget in the form of **Appendix A** will be deemed noncompliant and will not be considered for the award of this project. The budget shall include the cost of performing the tasks outlined herein. The budget shall be separate from their technical proposal.

The proposal must include a description of each of the following:

Staff Fees including the title of each individual assigned to the project; hourly rate per individual assigned to the project; and estimated number of hours for each individual assigned to the project.

Administrative Expenses including costs related to such items as photocopying, telecommunications, travel, data analysis, interviewing, etc.

Other Expenses identifying any other expenses (i.e. subcontracted services) by type and dollar amount. For subcontracted services itemized by subcontract name, job title, hours, hourly rate and total.

G. Diversity Practices

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices. Up to 10 points will be awarded based upon the contents of the **Diversity Practices Questionnaire attached as Appendix B, submitted by each Respondent to the RFP**

ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal. **In addition, the Contractual Requirement section (page 24) contains additional information about the forms that are required to be included in each Bidder's submission.**

- i. State Finance Law §§139-j and 139-k forms, submit with proposal

https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

- ii. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal)
- iii. Iran Divestment Act Statement, submit with proposal
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
 - o OCSD-2 - Staffing Plan
 - o OCSD-4 - MWBE and SDVOB Utilization Plan
- v. Encouraging the Use of NYS Businesses in Contract Performance Form, submit with proposal
- vi. Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal
- vii. W-9 Form, submit with proposal

Both the Technical Proposal and the Administrative Proposal Documentation must be submitted electronically via the designated email: TVFilmDisparityStudyRFP2021@esd.ny.gov

The email subject line should indicate: NY Television Writers and Directors Disparity Study Proposal submitted by [Bidder's name]

A complete package must be received by the deadline in the schedule of dates in this RFP. Proposals should be sent to the following dedicated email address: TVFilmDisparityStudyRFP2021@esd.ny.gov

2.4 CONDITIONS GOVERNING PROPOSALS

The issuance of this RFP and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Bidder;
- vii. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

2.5 NOTIFICATION OF AWARD

ESD will notify the Successful Respondent in writing. ESD will notify each Respondent whose proposal is not selected for the award of this project.

2.7 COST OF PROPOSAL

ESD is not liable for any and all costs incurred by any Respondent, including the Successful Respondent or any individual or firm associated with the Respondent, for work performed to prepare, explain and submit the Respondent's proposal. In addition, ESD is not liable for any and all costs incurred by the Respondent or any individual or firm associated with the Respondent to discuss, propose, negotiate or

otherwise address in any way whatsoever, terms and conditions of any contract resulting from this RFP. Furthermore, ESD is not liable for any costs incurred until the contract has been fully ratified by ESD.

SECTION III - CONTRACTUAL INFORMATION

3.0 CONTRACT PREPARATION

A contract defining all terms and conditions of the parties will be drafted by ESD. **The contract may incorporate any or all of this RFP, “Schedule A, Conditions Applicable to the Corporation’s Agreements for Services/Materials” A, and as much of the Successful Respondent’s final proposal as may be appropriate, and other documents as may be deemed suitable by ESD.**

After ESD and the Successful Respondent execute the contract, it must be submitted for approval to the Attorney General’s Office, the Office of the State Comptroller, and in some cases the Department of Civil Service, before it can become effective.

ESD will not enter into protracted negotiation with the Successful Respondent over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the Successful Respondent does not sign and return to ESD the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Respondent, ESD reserves the right to declare the award of the project to the Respondent null. ESD will not be responsible for any cost incurred by the Respondent as a result of a null award. Moreover, ESD reserves the right to cancel for cause any proposed amendment to the original contract which is not signed and returned to ESD within thirty (30) calendar days of receipt by the Respondent.

3.1 CONTRACT TERM / TERMINATION / CONSIDERATION ADJUSTMENT

This contract term shall be for a period of two years. This contract may be extended or renewed for three additional one (1) year periods provided the total contract with extensions may not exceed five (5) years. In the event of the renewal of this contract, prices may be adjusted in accordance with the Consumer Price Index Urban (CPIU), or at other rates as may be documented from authoritative sources, solely at ESD’s discretion.

The State shall have the right to terminate this contract early for cause or convenience as more fully described in Section 3.2 of this RFP.

3.2 CANCELLATION

Once a contract or other agreement resulting from this RFP is fully executed and approved, ESD has the right to cancel it immediately for cause or unavailability of State funds, and for convenience at any time on thirty (30) days written notice to the Respondent. If cancelled for convenience, ESD agrees to pay Respondent for approved charges incurred in the performance of the Contract up to the time of cancellation. If cancelled for cause, payment to the Respondent for approved charges incurred will be made at ESD’s sole discretion. If cancelled for unavailability of State funds, ESD will not be liable for payment, but will use its best efforts to pay outstanding charges previously approved by ESD to the extent permitted by New York State Law.

3.3 PAYMENT PROCESS

Payment for services performed to the satisfaction of ESD shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of reports and/or other documentation, if required elsewhere in this RFP. Receipts (original copies preferred) for all non-personnel expenses must be attached as evidence of cost. ESD shall reimburse the Respondent for travel expenses incurred in the performance of contractual duties, in accordance with rates permitted by New York State. See Appendix C for travel rates used within the United States and the US Department of State website located at:

<http://www.osc.state.ny.us/agencies/travel/travel.htm>

Invoices shall detail expenses in a manner essentially similar to the Budget (Appendix B of this RFP) required as part of your proposal.

3.4 INTELLECTUAL PROPERTY/PERSONAL PROPERTY RIGHTS IN DATA, COMPUTER SOFTWARE & OTHER INTELLECTUAL PROPERTY

3.4.1. Rights in Data:

All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including, without limitation, cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for and delivered to ESD in the course of performance of any contract resulting from this RFP ("Agreement") , (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of ESD. Data shall be deemed and determined to not include computer software and related documentation. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Respondent hereby covenants and agrees to transfer all right, title and interest in any such Data to ESD, and cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

3.4.2. Rights in COTS Computer Software:

Any commercial off-the-shelf ("COTS") computer software and its related documentation and licenses which were purchased by the Respondent to perform data collection, data dissemination and marketing in satisfaction of an Agreement shall be transferred to ESD to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to ESD.

3.4.3. Rights to Respondent-Owned Pre-Existing Computer Software/Documentation:

All computer software and related documentation, together with any versions of same or other intermediate components thereof, which may or may not be either confidential or proprietary, which was owned by the Respondent and existing at the time of the effective date of an Agreement and which, during the term of such Agreement is used by the Respondent in the conduct of the performance of the Agreement in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Respondent-Developed Computer Software

developed under the Agreement (hereinafter referred to as “Respondent-Owned Pre-Existing Computer Software/Documentation”), shall be deemed to remain the property of the Respondent and all right, title and interest therein to the same shall continue to vest in the Respondent, with the express understanding that the Respondent hereby licenses ESD to use such Respondent-Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph 3.4.5 herein below.

3.4.4. Rights to Contractor-Developed Computer Software and Software Documentation:

The Respondent will design, develop and install computer software as may be required for ESD. ESD will have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Respondent in the direct course of performance of an Agreement (hereinafter “Respondent-Developed Computer Software and Software Documentation”), shall be deemed to be the property of ESD and all right, title and interest therein to the same shall vest in ESD.

3.4.5. For Software License Agreements

For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/Documentation developed by the Respondent or purchased from outside sources in the course of performance on an Agreement, the Respondent hereby grants to ESD a nonexclusive, royalty-free, irrevocable, license to ESD, for:

3.4.5.1. All Software and Software Documentation (as herein above defined) developed or purchased in the course of performance of an Agreement; and

3.4.5.2. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Respondent-Developed Computer Software created under an Agreement;

3.4.5.3. This license shall include the right to reproduce for archival purposes only, and to use and make and permit others to use and make any modifications necessary to the Respondent-Developed Computer Software and Software Documentation, and the Respondent-Owned Pre-Existing Software/Documentation;

3.4.5.4. The rights granted by this license do not include any rights to derivative works, modifications, revisions, and upgrades to the Respondent-Developed Computer Software and Software Documentation which are developed by the Respondent after the term of an Agreement, or any extensions thereto, expires or is terminated.

3.4.6. Other Intellectual Property Rights:

Except for those intellectual property rights otherwise addressed in sections 3.4.1. through 3.4.5. above, the Respondent agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement rendered to ESD by the Respondent or any of its employees or subcontractors during the term of an Agreement (hereinafter "Items") shall be deemed to be a "work made for hire"(as herein above defined), and shall be provided to and become the exclusive property of ESD. If it is determined that any Items encompassed above do not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Respondent hereby covenants and agrees to transfer all right, title and interest in any such Items to ESD, and will cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. Respondent hereby assigns all rights in such intellectual property to ESD, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for ESD's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate documentation prepared by ESD in applying or otherwise registering, in ESD's name, all rights to any such Items. ESD has the right to grant licenses to make, use, buy or sell any Items derived from the services performed under an Agreement. Provided however, upon mutual agreement of the Respondent and ESD, ESD may waive its property rights, in writing, to any and all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement.

3.4.7. Additional rights

ESD reserves the right to include additional or revised intellectual/personal property provisions in an Agreement in addition to or in place of those described herein, with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created or purchased as a result of any Agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed to in writing, all intellectual property is owned by ESD, including reports, surveys and all other works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant and equipment provided by the Respondent to ESD, for the purpose of carrying out the provisions of this RFP. Property, plant and equipment may be subject to intellectual/personal property regulation when agreed to in writing by the parties.

3.5 REPORTS

In addition to reports discussed elsewhere in this RFP, ESD reserves the right to request reasonable programmatic and/or financial reports. When requested to do so, the Successful Respondent will provide ESD with reports in a reasonable time and in an acceptable format.

3.6 SUBCONTRACTING

Subcontracting is permitted when required by the Respondent to fulfill the terms and conditions of this RFP. If you intend to use subcontractors, your proposal must identify them (name and address) and explain which element(s) of the Scope of Service (section 1.3) and the Budget (see Appendix B), the subcontractor(s) is responsible for. ESD is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms (see Section 2.8 for details on MWBE subcontracting).

After the contract resulting from this RFP, if any, is awarded, any subcontracts or purchases in excess of \$50,000 that were not originally identified in the Respondent's proposal must adhere to the following:

- For subcontracts or purchases which are competitively bid, Respondent must request proposals from a minimum of three qualified firms, and the lowest responsible bidder shall be accepted unless otherwise approved in writing by ESD.
- Subcontracts or purchases that are sole or single source (entered into without submission to competitive bid) must be approved in writing by ESD prior to entering into the agreement. For purposes of this agreement, "sole source" contracts are defined as those where only one vendor is capable of supplying the required services, properties or creative artistry, because such service or property is so unique that it cannot be duplicated or obtained elsewhere. "Single source" contracts are defined as where, although more than one vendor can supply the required services or properties, circumstances of a material and substantial nature make the awarding of the contract to one vendor over the others appropriate. Prior to the acceptance of such services or properties the Respondent shall provide a detailed written statement to ESD which shall describe the sole or single source determination, the alternatives considered, and the terms of the proposed contract. In addition, the Respondent must establish, to the satisfaction of ESD, the reasonableness of the proposed expenditure. In general, the price charged to ESD should be no greater than the price charged in the private sector. Sole/single source contracts are to be avoided whenever possible.

SECTION IV - PROPOSAL FORMAT AND CONTENTS

4.0 GENERAL INFORMATION

In preparing proposals, Respondents must follow the guidelines and instructions within this RFP. A Respondent should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformity to the RFP instructions and requirements, as well as completeness and clarity in the proposal response. The Respondent is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process, or may be deemed non-responsive. A proposal that does not provide all the information requested below may be subject to rejection. The State does not require, nor desire, any promotional material which does not specifically address the response requirements of this RFP.

4.1 Evaluation Process

A. General Information

ESD will evaluate each proposal based on "Best Value." This means that the proposal that "optimizes quality, cost, and efficiency among responsive and responsible [Respondents]" shall be selected for award (State Finance Law, Article 11, § 163).

ESD, at its sole discretion, will determine which proposal best satisfies its requirements. ESD reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. Qualified staff/individuals will evaluate all submitted proposals. ESD may request clarification of a proposal. The evaluation process will include separate technical and cost evaluations and will be conducted as set forth herein.

Upon review of proposals submitted by Respondents, ESD may, at its discretion, submit to Respondents written questions and requests for clarification relating to their Technical, Administrative, and/or Cost Proposals. Respondents will be provided a reasonable period of time in which to submit written responses to ESD's requests for clarification.

Other than to provide clarifying information as may be requested by the Governor's Office, no Respondent will be allowed to alter its proposal or add information.

B. Submission Review

ESD will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 4 of this RFP. Proposals that are materially deficient in meeting the submission requirements (as determined by ESD) or that have omitted material documents (as determined by ESD) may be rejected at the sole discretion of ESD. All proposals passing the Submission Review will be evaluated.

C. Technical Evaluation (60 Points)

An evaluation panel will independently score each Technical Proposal that meets the submission requirements of this RFP. Evaluation Panel members will score Technical Proposals to identify Respondents with the highest probability of satisfactorily providing the services described in Section 1 of this RFP. Individual Panel member scores will be averaged to calculate a technical score for each responsive Respondent. The technical evaluation is 70 points of the final score based upon the following evaluation criteria categories:

- Firm Experience and Qualifications
- Staff Experience and Qualifications
- Project Plan and Approach
- Firm References

Evaluations will be based on the Respondent's demonstration of its ability to provide the services required through its Technical Proposal. Considering the above criteria, ESD may review and check Respondent and/or staff references. Evaluation panel members may re-evaluate any technical scores as a result of these reference checks. The inability to contact a reference provided by a Respondent will not be looked upon favorably.

During the evaluation process, ESD may require clarifying information from a Respondent. If specific sections of the written proposal require clarification, ESD will identify the section(s) and information requested in writing. The Respondent shall respond by the deadline stated in the correspondence. In addition, ESD may use the proposal, information obtained through any interviews, and ESD's own investigation of a Respondent's qualifications, experience, ability or financial standing, and any other material or information submitted by the Respondent in the course of evaluation and selection under this RFP. The State reserves the right to contact other sources not necessarily identified in the proposal to obtain information.

D. Diversity Practices Evaluation (10 Points)

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices. Up to 10 points will be awarded based upon the contents of the **Diversity Practices Questionnaire attached as Appendix B, submitted by each Respondent to the RFP**

E. Cost Evaluation (30 Points)

ESD's Finance Office will review the Proposal documents for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. All complete, responsive proposals will receive a cost score.

Cost Proposals will be evaluated on the Respondents' proposed project total cost. The maximum score (30 points) will be allocated to the proposal with the lowest cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following formula:

$$\text{Cost points awarded} = (30 \text{ potential points}) \times (\text{Low Bid} / \text{Respondent's Bid})$$

F. Finalists

An initial composite score for each responsive Respondent will be calculated by adding the Technical Proposal points to the Cost Proposal points to determine the Finalists. The finalist Respondents will be the Respondents with the three highest Initial Composite Scores and any Respondents within ten percent of the average Initial Composite Score of the top three ranked Respondents.

G. Interviews

Interviews/Oral Presentation of finalists may be conducted at the discretion of the Department. The Department reserves the right to conduct the interviews at the Department's Albany or New York, NY office, or via telephone, video conference or other online communication protocol. The finalists will be contacted to schedule an appointment for interviews.

The interview will be designed to allow finalists to demonstrate their ability to provide the required services. The proposed primary contact, as well as lead staff and other key personnel who would be responsible for providing the required services, should be present and participate in the interview.

Further information with regard to the format of this stage of the evaluation may be provided to the Firm prior to the interview. The interview should substantiate the characteristics and attributes claimed by the proposer in the written response to the RFP. Technical scores may be revised based on the information gained from Finalist Interviews; however, the interviews will not be an opportunity to cure material omissions in Respondents' proposals and are not a substitute for a well-written proposal.

In the event that there is only one finalist Respondent, ESD may choose to forego the interview at its discretion.

G. Final Composite Score

The final composite score will be the sum of the final technical and cost scores for each Respondent. The Respondent with the highest final composite score will be selected for award.

H. Debriefing

A debriefing may be requested by any unsuccessful offerer, within within 15 calendar days of notification by ESD that the proposal submitted by the unsuccessful offerer was not selected for an award. While a debriefing is typically conducted in person, it may be conducted by video conference, over the phone, or through written correspondence. The purpose of the debriefing is to be open and transparent, and to promote future competition. The debriefing will address strengths, weakness; and provide other relevant information that ESD used to determine best value, including the qualitative and quantitative analysis used in assessing the relative merits of the proposal. ESD is precluded from disclosing the content of any other proposal during the debriefing that would jeopardize the integrity of the procurement or impede contract negotiations.

I. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Bidder's submission.

i. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ii. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under “RFPs/RFQs”); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, go directly to the Vend-Rep system online at http://www.osc.state.ny.us/vendrep/forms_vendor.htm

For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, Bidders are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

iv. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive.

v. Executive Order 177

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification form can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

vi. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of **30 percent** for MWBE participation, **15 percent** for New York State-certified Minority-owned Business Enterprise ("MBE") participation and **15 percent** for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed

at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions **SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf>

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix B).

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

- A. ESD hereby establishes an overall goal of **6 percent** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.

- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

vii. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>

viii. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

ix. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

x. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xi. Insurance Requirements

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

xii. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.

Appendix A: Budget

Appendix B: Diversity Practices Questionnaire

APPENDIX A

BUDGET

PERSONNEL (Please list specific titles)

<u>Title</u>	<u>Hourly Rate</u>	<u>Number of Hours</u>	<u>Total Item</u>
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
Total Personnel Costs			\$ _____

ADMINISTRATIVE (i.e. Supplies, Travel, , IT Services, Telecommunications Etc.) Please list

\$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____
 \$ _____

Total Administrative Expenses	\$ _____ \$ _____	\$
OTHER EXPENSES (i.e. subcontract)	\$ _____ \$ _____ \$ _____ \$ _____	
Total Other Expenses		\$
TOTAL COST		\$

Do not change the format of this Budget. Attach additional pages if required follow the format of this page.

B - 1

